

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

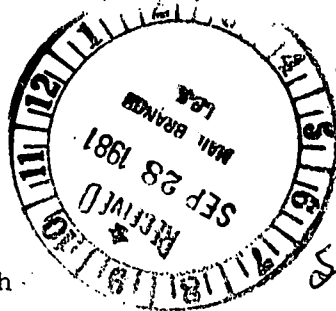
LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

214-651-6736

WILLIAM A. THIE
Vice-President-Law
JOE C. CRAWFORD
General Counsel

ARTHUR M. ALBIN
General Attorney
MICHAEL E. ROPER
Commerce Counsel
J. MICHAEL WILSON
General Attorney

September 23, 1981



IN REPLY REFER TO:

13277

312.1-G

RECORDATION NO. Filed 1425

SEP 29 1981 10 00 AM Date 9/29/81
50.00

INTERSTATE COMMERCE COMMISSION

ICC Washington, D.C.

Mrs. Agatha Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Re: Car Lease Agreement between Missouri-Kansas-Texas
Railroad Company, Lessor, and Gifford-Hill & Company,
Inc., Lessee, dated as of September 1, 1981, covering
lease of 25 100-ton open triple hopper cars

Dear Mrs. Mergenovich:

In accordance with the provisions of Section 11303, of the Interstate Commerce Act, and rules and regulations approved and perscribed by the Interstate Commerce Commission, pursuant thereto, there are submitted for filing and recording, three executed counterparts of a Car Lease Agreement, dated as of September 1, 1981, between Missouri-Kansas-Texas Railroad Company, Lessor, 701 Commerce St., Dallas, Texas 75202, and Gifford-Hill & Company, Inc., Lessee, P. O. Box 47127, Dallas, Texas 75247, covering twenty-five (25) 100-ton open triple hopper cars bearing recording marks and numbers of Gifford-Hill & Company, Inc., as follows:

GIHX 10029	GIHX 10165	GIHX 10402	GIHX 10589
GIHX 10035	GIHX 10204	GIHX 10415	
GIHX 10044	GIHX 10262	GIHX 10426	
GIHX 10049	GIHX 10263	GIHX 10458	
GIHX 10058	GIHX 10266	GIHX 10502	
GIHX 10085	GIHX 10316	GIHX 10508	
GIHX 10148	GIHX 10341	GIHX 10538	
GIHX 10161	GIHX 10363	GIHX 10582	

with regard to that car shall terminate immediately following the rental payment on the second rental payment date succeeding the date on which North American sends notice of such termination of rental installments to Lessee.

Nothing in this Agreement shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Agreement in the cars leased hereunder or possession of the cars leased hereunder to any corporation organized under the laws of the United States or any State thereof, into or with which the Lessee shall have become merged or consolidated; provided, that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder, that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease, and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to North American hereunder.

The term of use of the cars leased hereunder shall commence upon acceptance of each respective car by Lessee, and shall terminate twelve (12) years following the Commencement Date; provided, however, that if any such car shall not be returned to, and accepted by, North American on or before said date twelve years following the Commencement Date, Lessee shall pay to North American a Late Charge of \$32.35 per day for each such car not so returned and accepted, for every day until each such car has been so returned and accepted.

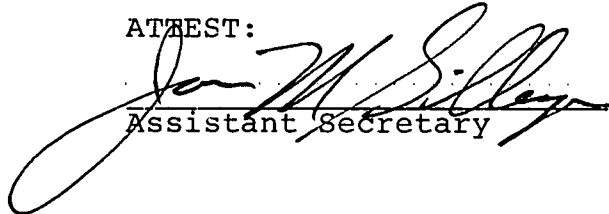
Notwithstanding any provision of this Agreement, this Agreement shall not become effective unless the Lease Supplement and Effectiveness Notice described in Exhibit A hereto is executed by North American prior to November 30, 1981 and until the date of effectiveness set forth therein which, if such notice is given, must be prior to November 30, 1981. North American agrees to send such Notice to Lessee promptly after execution thereof.

Dated as of September 1, 1981.

NORTH AMERICAN CAR CORPORATION

By 
Its Vice President

ATTEST:


Assistant Secretary

FMC CORPORATION

By 
Its Vice President

ATTEST:


Asst Secretary

Page 2

Mrs. Agatha Mergenovich

312.1-G

I am enclosing herewith a cashier's check in the amount of \$50.00 to cover the prescribed fee for recording these instruments. Please return to me the file marked copies for distribution to the parties.

I certify that I have knowledge of the matters set forth herein.

Yours very truly,



Arthur M. Albin

AMA/bmw

Enclosures

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

214-651-6736

RECORDATION NO. 1327 FILED 1425

WILLIAM A. THIE
Vice-President-Law
JOE C. CRAWFORD
General Counsel

SEP 29

1981-10 00 AM

ARTHUR M. ALBIN
General Attorney
MICHAEL E. ROPER
Commerce Counsel
MICHAEL WILSON
General Attorney

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED INTERSTATE COMMERCE COMMISSION
October 8, 1981

IN REPLY REFER TO: 312.1-G

1-2884053

Ms. Mildred Lee
Room 2303
Interstate Commerce Commission
12th Street and Constitution Ave., N.W.
Washington, D. C. 20423

No. 1
OCT 15 1981
Date.....
Fee \$..50.00
ICC Washington, D. C.

day check
was received

Re: Car Lease Agreement between Missouri-Kansas-Texas
Railroad Company, Lessor, and Gifford-Hill & Company,
Inc., Lessee, dated as of September 1, 1981, covering
lease of 25 100-ton open triple hopper cars.

Dear Ms. Lee:

With reference to Mr. Arthur M. Albin's letter of September 23, 1981
to Mrs. Agatha Mergenovich, copy of which is enclosed, I am enclosing a second
cashier's check for the filing fee. Since you advised me that the first cashier's
check sent with the September 23, 1981 letter was inadvertently lost, we have
stopped payment on that check.

If you have any questions, please call me.

Sincerely,

Belva M. Williams
Belva M. Williams

/bmw

Enclosures

Cashier's Check
#3138159
(Republic National Bank)

OCT 15 10 02 AM '81

Interstate Commerce Commission
Washington, D.C. 20423

10/15/81

OFFICE OF THE SECRETARY

Arthur M. Albin Gen. Atty.
Missouri Kansas Texas RR. Co.
701 Commerce Street
Dallas, Texas 75202

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **9/29/81** at **10:00am**, and assigned re-recording number(s). **13277**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

214-651-6736

WILLIAM A. THIE
Vice-President-Law
JOE C. CRAWFORD
General Counsel

ARTHUR M. ALBIN
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MICHAEL E. ROPER
Commerce Counsel
J. MICHAEL WILSON
General Attorney

13277

RECORDATION NO. Filed 1425

September 23, 1981

SEP 29 1981 10 00 AM
INTERSTATE COMMERCE COMMISSION

IN REPLY REFER TO:

312.1-G

Mrs. Agatha Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

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Railroad Company, Lessor, and Gifford-Hill & Company,
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Page 2
Mrs. Agatha Mergenovich
312.1-G

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I certify that I have knowledge of the matters set forth herein.

Yours very truly,

Arthur M. Albin

AMA/bmw

Enclosures

13277

RECORDATION NO. Filed 1425

SEP 29 1981 - 10 00 AM

C A R L E A S E A G R E E M E N T

INTERSTATE COMMERCE COMMISSION

AGREEMENT made and entered into as of the 1st day of September, 1981, between MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, hereinafter referred to as "Lessor," and GIFFORD-HILL & COMPANY, INC., hereinafter referred to as "Lessee."

R E C I T A L S

Lessor desires to sublease to Lessee and Lessee desires to sublease from Lessor, twenty-five (25) one hundred (100) ton open triple hopper cars, as described in Exhibit A attached hereto.

A G R E E M E N T

NOW, THEREFORE, IT IS COVENANTED AND AGREED BY THE PARTIES AS FOLLOWS:

1. Lease of Cars. Lessor agrees to lease to Lessee, and Lessee agrees to and hereby does lease from Lessor those certain Cars (hereinafter referred to collectively as the "Cars" and individually as the "Car"), being 25 100-ton open triple hopper Cars as further described and set forth in Exhibit A, attached hereto and incorporated herein by reference.
2. Delivery and Acceptance of Cars. Lessor shall deliver the Cars to Lessee at its tracks at Ogden, Texas, f.o.b., on or about the date first set forth above. Prior to delivery Lessee shall inspect said Cars at Denison, Texas, and shall execute a Certificate of Acceptance covering Cars which it determines comply with the description set forth above, are fit and suitable for operation under the interchange rules of the Association of American Railroads, and are in a physical condition acceptable to Lessee.
3. Use and Possession. Throughout the continuance of this lease and so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of the Cars and may use such Cars (i) on its own property, (ii) upon the lines of the Lessor, and (iii) upon the lines of any other railroad, but within the boundaries of Harris County, Texas, for interchange of traffic and switching purposes. Lessee shall receive such compensation for the use of said Cars (i) as is provided for in the then-current Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars for the interchange of traffic adopted by the Association of American Railroads (hereinafter called the "Interchange Rules"), or (ii) such other compensation as Lessee and the user railroads may agree to, provided Lessee shall comply at all times with the requirements of Section 5 hereof, but any such uses of said Cars shall at all times be subject to the terms and conditions of this lease.
4. Term. This lease shall be for a term of twelve (12) months, commencing as of the date first set forth above and terminating on August 31, 1982, unless sooner terminated in accordance with the provisions hereof.

5. Rental. During the term of this lease, Lessee shall pay to Lessor for each Car, commencing as of the date first set forth above, a rental of Two Hundred Eighty Dollars (\$280.00) per Car per month. Rental for the first partial month and the last partial month of this lease shall be prorated on the basis of Nine and 33/100ths Dollars (\$9.33) per day per Car, based on a 30-day month. Rental for any Car removed from the terms and provisions of this lease by reason of loss, theft, or destruction as set forth below, shall also be prorated for any partial month on the basis of \$9.33 per day. Rental shall be due and payable by Lessee to Lessor on or before the 10th day of the month for each month for which such rental accrues hereunder.

6. Mileage Payments. Throughout the continuance of this lease and so long as Lessee is not in default hereunder, Lessor shall pay to Lessee a mileage payment of \$0.0375 per mile per Car on all Car movements on lines of Lessor, whether loaded or empty. Said payments shall be made by Lessor to Lessee on or before the 25th day of the month following the month in which such car movements occurred. Lessee shall be entitled to retain all mileage payments of whatever nature received from railroads other than Lessor. Provided however, Lessor shall not pay any mileage payments while any Car is being transported by Lessor in connection with its obligation set forth in Paragraph 8 below.

In the event Lessee shall be billed or invoiced by any other railroad company for maintenance work or running repairs, Lessee shall pay such bill or invoice to the railroad company submitting same. Lessee will submit its own invoice and a copy of the other railroad's bill or invoice to Lessor and Lessor shall reimburse Lessee for such amounts so paid by Lessee to such other railroads.

7. Title. Lessee acknowledges and agrees that by the execution of this agreement it does not obtain, and by payments and performance hereunder it does not and will not have or obtain any title to the Cars or any property right or interest therein, legal or equitable, except solely as Lessee hereunder and subject to all of the terms and provisions hereof.

8. Maintenance. Lessor, during the continuance of this lease, shall perform or cause to be performed and shall pay all costs and expenses of all maintenance and repair work necessary to maintain the Cars in good working order and general condition as when delivered to Lessee, ordinary wear and tear excepted. Lessee shall not be responsible for ordinary wear and tear. Any parts, replacements, or additions made to any Car shall be accessions to such Car, and title thereto shall immediately vest in Lessor without cost or expense to Lessor.

9. Taxes. Lessor shall be responsible for and shall pay all use and ad valorem taxes and assessments levied or assessed during the continuance of this lease upon the Cars.

10. Liens. Lessee shall keep the Cars free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's interest, which arise out of any suit involving Lessee or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this lease and shall promptly discharge any such lien, encumbrances or legal process.

11. Warranty - Representations. Lessor makes no warranty or representation of any kind whatsoever, either express or implied as to any matter whatsoever, including specifically but not exclusively, fitness, design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder, and Lessor shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential on account of any matter which would otherwise constitute a breach of warranty or representation.

12. Car Marking. Lessor, at Lessee's expense, shall cause said Cars to be marked with Lessee's recording marks "GIHX" with the numbers to remain the same as they exist on each of said Cars. Except as provided for herein, Lessee shall not permit any other marking, labeling, or stenciling of said Cars.

13. Loss, Theft or Destruction of Cars. In the event any Car is lost, stolen, or is destroyed, or is damaged beyond economic repair from any cause whatsoever, except if caused by Lessor, Lessee shall promptly and fully inform Lessor of such occurrence and shall, at the time of the next monthly payment or at such other date as may be mutually agreed upon, pay to Lessor as liquidated damages in lieu of any further claim of Lessor hereunder except for accrued rent and such claims as may have arisen under Paragraphs 9, 10, and 18, an amount in cash based upon the depreciated value of any such Car as determined pursuant to the rules of the Association of American Railroads.

14. Return of Cars. Upon the termination of this lease, as provided for herein, the Lessee agrees to return the Cars (except for any Cars lost, stolen, or destroyed and paid for pursuant to Paragraph 13 above) forthwith to Lessor at any point on Lessor's lines.

15. Default. The term "event of default" for the purpose hereof shall mean any one or more of the following:

- (a) non-payment by Lessee within thirty (30) days after the same becomes due of any installment of rental or any other sum required to be paid hereunder by Lessee;
- (b) Lessee shall default or fail for a period of thirty (30) days following written notice to Lessee, in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder;

- (c) a decree or order shall be entered by a court having jurisdiction in the premises adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Lessee under the Federal Bankruptcy Act or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) days;
- (d) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceedings or to any action taken or proposed to be taken in any proceedings or action described in paragraph 14(c), or the making by Lessee of any assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by Lessee in furtherance of any such action.

16. Remedies. Upon the happening of an event of default, Lessor, at its option, may:

- (a) proceed by appropriate court action either at law or in equity for specific performance by the Lessee of the applicable covenants of this lease or to recover from Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which Lessor may sustain by reason of Lessee's default or on account of Lessor's enforcement of its remedies hereunder;
- (b) elect only to terminate the Lessee's right of possession (but not to terminate the lease) without releasing Lessee in whole or in part from its liabilities and obligations accrued hereunder or hereafter to accrue for the remaining term of the lease and thereupon require Lessee to deliver all such Cars to Lessor at any point designated by it or to take possession itself of any or all of the Cars wherever same may be found. Lessor may, but need not, require delivery of the Cars to it or repossess the Cars, but in the event the Cars are delivered to Lessor or are repossessed, Lessor shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessor shall not be required to accept any lessee offered by Lessee or do any act whatsoever or exercise any diligence whatsoever in or about the procuring of another

lessee to mitigate the damages of the lessee or otherwise. The election by Lessor to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained;

- (c) declare this lease terminated and recover from Lessee all amounts then due and payable plus, as liquidated damages for loss of the bargain and not as penalty, a sum which represents the excess of the present worth, at the time of such termination, if any, of the aggregate rental which would have thereafter accrued from the date of such termination to the end of the original term over the then-present worth of the fair rental value of the Cars for such period. Present worth is to be computed in each case on the basis of a five percent (5%) per annum discount, compounded annually from the respective dates upon which rental would have been payable hereunder had this lease not terminated. In addition to the foregoing, Lessor shall recover any damages sustained by reason of the breach of any covenant of the lease other than for the payment of rental;
- (d) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free from any right of the Lessee to use the Cars for any purposes whatsoever.

The remedies provided in this Paragraph 15 in favor of Lessor shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies, in Lessor's favor existing at law or in equity.

17. Sublease and Assignment. Lessee shall have no right to sublease any of the Cars. Lessor shall have the right to assign the lease or its rights thereunder as follows: All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee, but subject to Lessee's rights under this lease. If Lessor shall have given written notice to Lessee stating the identity and post office address or any assignee entitled to receive future rentals and any other sums payable to Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. Lessee will not amend, alter or terminate this lease without the consent of the assignee while such assignment is in effect. The rights of any assignee or any party or parties on behalf of whom such assignee is acting shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever, unless arising out of a breach of any obligation of Lessor hereunder or by reason of any other indebtedness or liability at any time owing by Lessor to the Lessee.

18. Indemnification. Lessee hereby agrees to indemnify and save harmless the Lessor from and against any and all liability, demands, and causes of action, whether well-founded or otherwise, including the

cost of defending same, for bodily injury to or death of any person or damage to the property of any person whatsoever, including the parties hereto or the employees of either of them, arising out of or in connection with the use or operation of said Cars leased hereunder, whether said damage shall be the result of obvious defects or other causes, and shall not call upon the Lessor or any other party having an ownership or financial interest in and to said Cars for contribution in any sum whatsoever by reason of the fact of such interest in and to said Cars. Indemnity shall apply from the time the said cars are accepted by the Lessee until they are returned to and accepted by the Lessor; provided, however, this indemnification provision shall not apply as to any Cars when they are in the possession of Lessor while being transported on Lessor's lines of railroad unless such bodily injury, death or damage to property be caused by the negligence of Lessee, in which event said provisions shall apply. Provided further that this paragraph shall not apply to any death, bodily injury or property damage arising or resulting from latent defects or from Lessor's negligence in maintaining or repairing any such Car.

19. Notice. Any notice required or permitted to be given pursuant to the terms of this lease shall be properly given when forwarded registered United States mail, return receipt requested, postage prepaid, addressed to:

Missouri-Kansas-Texas Railroad Company
701 Commerce Street
Dallas, TX 75202
Attention: K. R. Ziebarth

or at such other address as Lessor may from time to time designate by notice in writing and to Lessee at:

Gifford-Hill & Company, Inc.
P. O. Box 47127
Dallas, TX 75247
Attention: ~~R. C. Caldwell~~ *J.R. Sutton*

or any such other place as Lessee may from time to time designate by notice in writing.

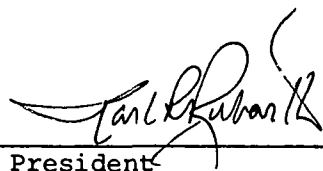
20. Recording of Lease. Lessee agrees to forthwith, following execution hereof, cause this lease to be recorded with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commerce Act.

21. Counterparts. This agreement may be executed in multiple counterparts, each of which shall be deemed an original.

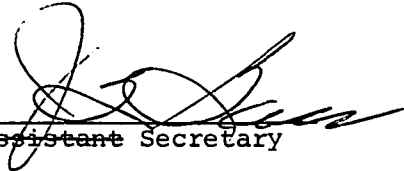
22. Law Governing. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this lease as of the day and year first above written.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
Lessor

By 
Vice President

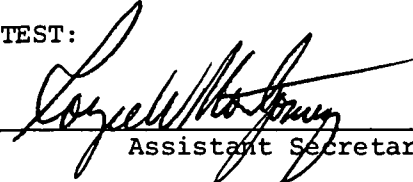
ATTEST:


Assistant Secretary

GIFFORD-HILL & COMPANY, INC.,
Lessee

By 
Vice President

ATTEST:



Assistant Secretary

G-H LAW DEPT
Atty JEH
Date 9-3-81

THE STATE OF TEXAS:

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Karl R. Ziebarth, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2nd day of September, 1981.


_____, Notary Public in
and for the State of Texas

My Commission expires: Dec 31, 1984.

THE STATE OF TEXAS:

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared D. L. OLSON, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said GIFFORD-HILL & COMPANY, INC., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9th day of September 1981.

Donna G. Wharley
DONNA G. WHARLEY, Notary Public in
and for the State of Texas

My Commission expires: June 15, 1984.

CERTIFICATE OF INSPECTION AND ACCEPTANCE

To: Missouri-Kansas-Texas
Railroad Company

Date: August 26, 1981

The undersigned, a duly authorized representative of Gifford-Hill & Co., Inc. (the "lessee") does hereby certify that he has made a thorough examination of the 100-ton triple hopper cars listed below pursuant to that certain car lease agreement dated as of September 1, 1981 between Missouri-Kansas-Texas Railroad Company (the "lessor") and lessee and further certifies that:

(A) The cars listed below (the "Cars") are accepted by lessee in accordance with the terms and provisions of said car lease agreement.

(B) The Cars listed below are in good order and condition and are suitable for use by lessee pursuant to the terms and provisions of said car lease agreement.

(C) By acceptance hereof the Cars are subject to the terms and provisions of the car lease agreement. The Cars to which this certificate pertains are:

GIHX 10029	GIHX 10165	GIHX 10402	GIHX 10589
GIHX 10035	GIHX 10204	GIHX 10415	
GIHX 10044	GIHX 10262	GIHX 10426	
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GIHX 10085	GIHX 10316	GIHX 10508	
GIHX 10148	GIHX 10341	GIHX 10538	
GIHX 10161	GIHX 10363	GIHX 10582	

Dated at Denison, Texas this 26th day of August, 1981.

GIFFORD-HILL & CO., INC.

By *R C Caldwell*
R C Caldwell
Vice President Transportation Services